

### **III. REMARKS**

#### **A. Status of the Claims**

Claims 1-49 are pending in the application. Claims 1-49 stand rejected by the Examiner. By this amendment claims 15 and 33 are amended. No new matter is added.

#### **B. Claim Language Amendments**

The Applicants thank the Examiner for pointing out the errors with respect to the claim language in claims 15 and 33. Applicants have amended claims 15 and 33 per the recommendation of the Examiner.

#### **C. Claim Rejections**

##### **1. 35 U.S.C. § 102(b)/103(a) - Chmielewski '180**

The Office Action rejects claims 1-3, 5-14, 16-21, 23-32, and 34-49 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,646,180 to Chmielewski ("Chmielewski '180"). Pursuant to 35 U.S.C. § 102(b), a prior art patent reference must have been published or issued "more than one year prior to the date of application for patent in the United States" in order to bar a patent. Applicants respectfully submit that the Chmielewski '180 reference is not a proper 102(b) prior art reference because Chmielewski '180 was not published or issued until November 11, 2003, which is *after* the filing date of the current application (July 15, 2003). In addition, the present application claims priority as a continuation of U.S. Application No. 09/997,233, which was filed on November 30, 2001. The Chmielewski '180 reference therefore is not prior art under 35 U.S.C. § 102(b), and accordingly, applicants respectfully request that the Examiner reconsider and withdraw this rejection.

The Office Action alleges that in the alternative, claims 1-3, 5-14, 16-21, 23-32, and 34-49 are unpatentable under 35 U.S.C. § 103 (a) over the Chmielewski '180 reference.

## Attorney Docket No. 53394.000712

In order to apply a reference under 35 U.S.C. § 103(a), the reference must qualify as prior art under 35 U.S.C. § 102(a),(b) or (e). Chmielewski '180 did not issue and was not published until November 11, 2003, with is after the filing date of the current application, so it does not qualify as prior art under § 102 (a) or (b). In order to apply a reference under § 102(e), the prior art reference must be a patent that was filed "by another" before the filing date of the present application. In accordance with MPEP §706.02(l)(2), applicants provide the following statement:

Applicants respectfully submit that, on the date the present application was filed, the present invention and the Chmielewski '180 patent were commonly owned by or subject to assignment to Paragon Trade Brands, Inc., and therefore can not be prior art under 35 U.S.C. § 103(a) (*see* MPEP § 706.02(l)(1); 35 U.S.C. § 103(c)). The assignment for the '180 patent was recorded on April 23, 1998, at reel/frame 009127/0138, and the assignment for the present application, was recorded on March 7, 2002 at reel/frame 012668/0946.

Accordingly, Applicants respectfully submit that the Chmielewski '180 reference is not prior art and the § 103 rejections to claims 1-3, 5-14, 16-21, 23-32, and 34-49 based on this reference should be withdrawn.

2. 35 U.S.C. § 103 - Chmielewski '180 in view of Chmielewski '620

The Office Action rejects claims 7-12, 22, 15 and 33 under 35 U.S.C. § 103(a) as unpatentable over Chmielewski '180 as applied to claim 1, and further in view of U.S. Patent No. 6,068,620 to Chmielewski ("Chmielewski '620"). As discussed above, Chmielewski '180 is not available as a prior art reference under 35 U.S.C. § 103. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 7-12, 22, 15 and 33.

Attorney Docket No. 53394.000712

3. 35 U.S.C. § 103 - Chmielewski '180 in view of Kuehn

The Office Action rejects claim 4 under 35 U.S.C. § 103(a) as unpatentable over Chmielewski '180 as applied to claim 1, and further in view of U.S. Patent No. 6,238,379 to Kuehn, Jr., *et al.* ("Kuehn"). As discussed above, Chmielewski '180 is not prior art reference under 35 U.S.C. § 103. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 4.

Applicants wish to bring to the Examiner's attention the fact that the present application is a continuation of application serial No. 09/997,233. Applicants assume that the Examiner has reviewed the parent file and the record contained therein, all of which is believed to have been made of record in the present application. To the extent all of the information in the parent application has not been made of record in the present application, applicants respectfully request that the information be considered in accordance with MPEP §609.

IV. CONCLUSION

It is believed that no fees are due in connection with filing this Amendment. However, in the event it is determined that any fees are due, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

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